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U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI, FL

Date: **JUL 17 2008**

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, and is now before the *Administrative Appeals Office (AAO) on appeal*. The appeal will be sustained.

The record reflects that the applicant was born on August 11, 1988 in Cuba. The applicant's parents, as reflected in her birth certificate are, [REDACTED] and [REDACTED]. The applicant's parents were divorced in 1990. The applicant's mother became a U.S. citizen upon her naturalization on February 26, 2006, when the applicant was 17 years old. The applicant was admitted to the United States as a lawful permanent resident on November 9, 1999, when she was 11 years old. The applicant presently seeks a certificate of citizenship claiming that she derived U.S. citizenship upon her mother's naturalization.

The district director considered the applicant's citizenship claim under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432 (repealed). The director determined that the applicant did not qualify for citizenship because she had failed to submit her parents' divorce decree and therefore could not establish that she was in her mother's "legal custody" upon her parents' divorce.

On appeal, the applicant submits an original document issued in 1992 certifying her parents' divorce decree. The document evidences that the applicant's parents were divorce on February 4, 1990 in Cuba, and that custody of the applicant was awarded to her mother.

Section 321 of the former Act was repealed by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. Sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, were amended by the CCA. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under 18 years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The record reflects that the applicant was admitted to the United States as a lawful permanent resident as of 1999, when she was 11 years old. Her parents were divorced in 1990, and custody of the applicant was then granted to her mother. The record reflects that the applicant was residing in the legal and physical custody of her mother. The record further indicates that the applicant's mother became a U.S. citizen in February 2006, when the applicant was 17 years old. As such, the applicant automatically acquired U.S. citizenship pursuant to section 320 of the Act, as amended by the CCA.¹

¹ The AAO notes that the record contains a copy of the applicant's U.S. passport. In accordance with *Matter of*

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in the present case has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.